

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5878 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MANSUKHLAL MATHURADAS

Versus

STATE OF GUJARAT

Appearance:

MR ASHIN H DESAI for Petitioners
MR TS SOMPURA, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 16/01/97

ORAL JUDGEMENT

The present petition brings before this Court, a queer situation. The root of the matter would be a show cause notice issued by the Revenue Circle Inspector, Malia Hatina, within the District of Junagadh, dated July 25th July 1996. The said notice has been addressed to the present petitioners. The say of the Revenue Circle

Inspector in the said notice at Annexure.I is that the land in question was granted under an "Aghat" formula in favour of one Hemraj Keshavji Sheth. It is further stated that, later on Sheth Hemraj Keshavji had expired and the names of the heirs and legal representatives of the deceased came to be mutated in the revenue record. It is further said that, in violation of the terms and conditions, the said grantee has disposed of or sold the land in favour of the present petitioners. The pertinent aspect to be noticed is that the above said notice was only against the petitioners and that only the petitioners were called upon to show cause as to why the land should not be forfeited after coming to the conclusion that the grantee has violated the terms and conditions of the grant. The petitioners were the persons who were called upon to show cause and ultimately, they had shown the cause. The other aspect which requires a pertinent notice is that, at no point of time, the original grantee or the successor in title was called upon to show cause. When the orders, following the notice, had gone against the petitioners, they had approached the Government by filing the revision application under Section 211 of the Bombay Land Revenue Code, 1879. It appears that the Secretary, who was empowered to hear the said revision was of the opinion that, the petitioners who were the revision petitioners before the said authority should implead the heirs and legal representatives of the original grantee. The learned Counsel who used to represent the cause of the revision petitioners was not prepared to do so on the ground that, at no point of time, the heirs and legal representatives of the original grantee were the parties in the proceedings. Despite this, the respondent no.2-Shri S.Chandrashekhar, Secretary, Revenue Department (Appeals), Ahmedabad, had come to the conclusion that it was incumbent upon the revision petitioners to join the heirs and legal representatives of the deceased grantee in the proceedings. The said orders dated August 6, 1996 are in challenge before me, in the present petition.

The question which is required to be decided is as to whether, when the heirs and legal representatives of the original grantee were not the parties in the proceedings throughout, the respondent no.2 could have insisted for their impleading in the proceedings before him as the parties. The orders and the written submissions made by the learned Counsel for the revision petitioners would go to show that the revision petitioners had agreed to proceed ahead with the matter without joining the heirs and legal representatives of the deceased grantee as the parties in the proceedings.

It was also clear that the revision petitioners were duly prepared to take the consequences of not joining the said persons as the parties in the proceedings. Despite this, the respondent no.2 has persisted in his view that the parties should be added as per his directions.

Two decisions rendered by this Court require perusal before reaching the final conclusion in the matter. The first one happens to be a Bench decision in MUMAN HABIB NASIR KHANJI v. STATE OF GUJARAT AND ORS., 11 GLR P.307. This Bench decision explains the scope and ambit of the powers under Sections 209 and 211 of the Bombay Land Revenue Code (5) of 1879. The decision says that the revisional powers under Section 211 does not confer on the authority, power to take additional evidence and no additional evidence, therefore, could be allowed under Section 211. This decision which examines and explains the scope and ambit of the powers under Sections 209 and 211 of the Bombay Land Revenue Code, 1879 makes it clear that, at the revisional stage under Section 211, no additional evidence could be allowed.

I am conscious that the respondent no.2 was not concerned with a case in which he would ask the party or he would permit the party to lead additional evidence at the revisional stage, but the revisional authority namely, the respondent no.2 was indeed, insisting for the impleading of a party in the proceedings despite the fact that the said "party" was never a party in the proceedings before the authorities below. Not only this, but the Revenue Circle Inspector had preferred not to issue any show cause notice against the heirs and legal representatives of the original grantee calling upon them to show cause as to why the land should not be forfeited. In other words, the "parties" proposed to be impleaded as parties by the respondent no.2 were never in the picture at any point of time. The other decision on which reliance is being placed by learned Counsel Mr. Desai for the petitioners is a decision rendered by a learned Single Judge of this Court in MANUBHAI BHIKHABHAI VALAND v. STATE OF GUJARAT, 1996(3) GCD P. 759, GUJARAT. The said was also a case touching the provisions contained under Section 211 of the Bombay Land Revenue Code, 1879. In that case, the revisional authority had gone a step further and had passed the orders rejecting the revision application on the ground that, certain persons were not impleaded as party in the proceedings. This Court, in remarkably sharp words, has said that the orders rejecting the revision application clearly shows the lack of knowledge about the elementary principle of law on the part of the revisional authority. The language in my

view is sufficient and potent enough to indicate the principle which shall have to be brought in focus. The principle is that, the revision application could not have been rejected on the ground that a party as suggested by the revisional authority is not being impleaded in the proceedings.

Of course, the facts and circumstances under which the above said decisions came to be pronounced by this Court, were different, but they go a step further, supporting my conclusion because, as indicated above, right from the beginning, commencing from the stage of the issuance of a show cause notice, the heirs and legal representatives of the original grantee were not the parties in the proceedings. It appears that, while hearing the revision application under Section 211 of the Bombay Land Revenue Code, 1879, the revisional authority cannot persist that a particular person or persons should be brought before him in the capacity of a party in the proceedings. This is especially so because, the provisions contained in Section 211 of the Bombay Land Revenue Code, 1879 empower the revisional authority only to modify, annul, or reverse a decision or order of a subordinate officer or the proceedings instituted by him. This could be done on the basis of the record and the proceedings which would reach before the revisional authority.

Looking to this position emerging from law and the facts, it appears that the respondent no.2 was not at all justified in directing the petitioners to join or implead the heirs and legal representatives of the original grantee as the parties in the proceedings. It should not be overlooked that the revision petitioners were prepared to take the consequences of not joining the heirs and legal representatives at the revisional stage. Even if the revision petitioners wanted to join the heirs and legal representatives of the original grantee, probably, the same could not have been done without an express leave sought and obtained because they were never the party in the proceedings right from its commencement starting with the issuance of a show cause notice.

This all would oblige me to recognise the present petition and to make the rule absolute. I order accordingly. The orders under challenge are hereby quashed and set aside, with a direction to the respondent no.2 to hear the revision application according to law and on merits, without insisting for the impleading of the proposed parties. This should be done as expeditiously as possible and within a period of two

months from the date of receipt of the present orders.

Upon a plea coming from the learned Counsel for the petitioners, which requires a countenance, I say that, till the stay application presented by the petitioners gets decided and thereafter also for one week, the petitioners shall stand protected qua their possession.
